

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

July 28, 2003

In Reply Refer To:
3100 (310) P

EMS TRANSMISSION 08/04/2003
Instruction Memorandum No. 2003-234
Expires: 09/30/2004

To: All Field Officials

From: Director

Subject: Integration of the Energy Policy and Conservation Act (EPCA) Inventory Results into Oil and Gas Exploration and Development Use Authorizations.

Program Areas: Oil & Gas Operations; Planning and Environmental Coordination

Purpose: The purpose for issuing this Instruction Memorandum (IM) is threefold: (1) to restate my commitment to not unduly restrict access to the public lands for energy exploration and development; (2) to reinforce our obligation to monitor and adaptively manage public lands and resources; and, (3) to outline a strategy for integrating the EPCA inventory results into energy use authorizations. This IM sets forth the use authorization process improvements that will enhance our ability to protect the environment and sensitive resources, as well as facilitate energy development, where appropriate, through the use of monitoring and adaptive management.

It is important that our employees understand the EPCA effort and its applicability to oil and gas use authorizations and State Offices take whatever time is necessary to train or brief the field on our objectives. Likewise, we want our partners, stakeholders, Tribes, and the public at large to identify with this effort and give them an opportunity to understand our policy and comment during the process.

This IM only focuses on our initial efforts to incorporate EPCA findings. It is important our employees understand that the EPCA integration represents principles applicable to all energy and energy-related programs within the Bureau, not just oil and gas.

Background: The strategy for integrating the EPCA inventory results into the Bureau of Land Management's (BLM's) business practices has two categories: Land Use Planning.

and Use Authorizations. This IM provides guidance on how the EPCA inventory results will be integrated into BLM's oil and gas Use Authorizations to:

1. Promote an adaptive process for monitoring and implementing lease stipulations and use authorization Conditions of Approval (COAs) to ensure stipulations and COAs are both necessary and effective;
2. Improve internal communications, policy awareness, and promote enhanced communications with our stakeholders and partners; and,
3. Apply the EPCA inventory results to create a more efficient use authorization process.

This IM was prepared in accordance with Executive Order (EO) 13212, which states, "...agencies shall expedite their review of permits or take other actions necessary to accelerate the completion of [energy-related projects] while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation and where appropriate."

Policy/Action: Many land use plans are nearly 20 years old. It is important to ensure oil and gas lease stipulations developed within our older land use plans and attached to existing leases, are still necessary and effective. When processing an Application for Permit to Drill (APD) or related use authorization, lease stipulations associated with the applicable lease must be reviewed in the site-specific National Environmental Policy Act (NEPA) analysis conducted for approval of the use authorization. Stipulations must also be evaluated through ongoing project monitoring to ensure they meet current needs. When it is determined that lease stipulations are no longer necessary or effective, the BLM must consider granting waivers, exceptions, or modifications. Waivers, exceptions, or modifications are an integral part of the adaptive management process. This process includes monitoring and continual evaluation of BLM requirements and changing resource conditions to reduce constraints unnecessary for environmental protection, and/or enhance environmental protection where it is warranted. In addition, the COAs attached to use authorizations must be developed through the NEPA process and periodically evaluated for necessity and effectiveness through an ongoing monitoring program.

1. Adaptive Use of Waivers, Exceptions, and Modifications for Lease Stipulations and Conditions of Approval

A. Lease Stipulations

Waivers, exceptions, and modifications are viable and effective means of adapting oil and gas lease stipulations to meet changing circumstances. Circumstances for granting a waiver, exception, or modification are documented in most existing land use plans and are a requirement of all future land use plans.

Terms Defined

- **Lease Stipulations** are conditions of lease issuance that provide protection for other resource values or land uses by establishing authority for substantial delay or site changes or the denial of operations within the terms of the lease contract. The authorized officer has the authority to relocate, control timing, and impose other mitigation measures under Section 6 of the Standard Lease Form. Lease stipulations clarify the Bureau's intent to protect known resources or resource values.
- A lease stipulation **waiver** is a permanent exemption to a lease stipulation.
- A lease stipulation **exception** is a one-time exemption to a lease stipulation; exceptions are determined on a case-by-case basis.
- A lease stipulation **modification** is a change to the provisions of a lease stipulation either temporarily or for the term of the lease.

Examples of the use of waivers, exceptions, and modifications:

The lease stipulation applicable to an APD under review may identify Elk Winter Range avoidance from November 15 through April 15. The land use plan may indicate a waiver could be granted if it was determined elk no longer use the area for winter range. An exception could be granted if a mild winter was occurring and the long-term weather forecast was for continuation of this trend. A modification could be granted if it was determined the elk have changed their migration patterns and are not entering the area until mid-December, thus justifying a change in the start of the seasonal constraint to December 15.

For further guidance, refer to BLM Manual Handbook H-1624-1, Chapter IV.C.2&3; 43 CFR 3101.1-4; and Uniform Format for Oil and Gas Lease Stipulations, March 1989.

Evaluation and Monitoring of Lease Stipulations

The Field Manager must use the Use Authorization/NEPA analysis process to evaluate the continued need for stipulations imposed by the operator's lease. To be necessary and effective, a stipulation must be based on sound science, current land patterns and uses, resource protection requirements, and consistent with the requirements of the Land Use Plan, regulations, and laws. When reviewing lease stipulations through the Use Authorization/NEPA analysis process, consideration must be given to the least restrictive constraint necessary to meet the resource protection objective. Stipulations developed in the land use plan many years ago may no longer be appropriate for meeting current environmental protection requirements. Sensitive resources identified for protection may no longer be present, new sensitive resources may have been identified, or new technology and best management practices may now facilitate oil and gas development without harm to sensitive resources. In many cases, stipulations were applied in the land use plan over broad areas without detailed supporting data, analysis, and adequate consideration to balanced resource use. The use of site-specific COAs, attached to the approved use authorization, may provide more appropriate protections for the environment than stipulations developed decades ago.

The EPCA inventory identified areas where there are major constraints to oil and gas development, such as multiple, overlapping timing stipulations. The Field Manager must give priority consideration to evaluating the necessity and effectiveness of lease stipulations in those Focus Areas identified in the EPCA report as having high oil and gas potential and in areas where access to public lands and energy minerals is severely restricted.

Monitoring is a requirement of the BLM Planning Regulations and NEPA. Monitoring is also critical to meeting BLM's resource stewardship obligations and ensuring the success of adaptive environmental management principles. Evaluation of the continued necessity and effectiveness of leasing stipulations through a monitoring program is key for optimum access to the public lands and environmental protection. Monitoring can occur in conjunction with the Inspection and Enforcement (I&E) program; through resource condition monitoring conducted by Field Office Renewable Resource program specialists; or through scientific studies. If monitored conditions allow, the Field Manager must take steps to waive, modify, or exempt lease holders from the stipulations. Conversely, if resource conditions deteriorate to the threshold level contemplated in the plan or NEPA document, the Field Manager must take measures to mitigate further impacts consistent with lease rights.

B. Evaluation and Monitoring of Conditions of Approval

Conditions of Approval (COAs) resulting from site-specific NEPA analysis must be science- or safety-based, incorporate "best management practices," and be consistent with the requirements of the lease terms, stipulations, applicable regulations and laws. COAs can also be an effective means of further defining performance-based lease stipulations to accommodate current resource conditions and land uses identified through the NEPA process. Field Managers must ensure that COAs are necessary and do not exceed the effective limitations of existing lease "terms and conditions" and lease stipulations unless warranted to prevent unnecessary and undue degradation or meet other regulatory requirements. COAs must be based on scientific analysis documented in the NEPA process.

As with leasing stipulations, evaluating the continued necessity and effectiveness of COAs is critical for optimum access to the public lands and environmental protection. All use authorizations containing COAs must be periodically evaluated to confirm the COAs are serving their intended purpose. Monitoring is a key aspect of the evaluation process. Monitoring of the resource conditions for which the COAs were imposed in the APD or Sundry Notice approval process is critical to the success of adaptive environmental management principles. If monitored conditions allow, the Field Manager must take steps to waive or modify the COA, or exempt the operator from the COA within the limits of the use authorization's NEPA analysis and decision. Conversely, if resource conditions deteriorate to the threshold level contemplated in the land use plan or use authorization NEPA document, the Field Manager must take measures to

mitigate further impacts. In some circumstances, resource advocacy groups and/or oil and gas operators may perform resource condition monitoring for BLM; however, BLM must maintain monitoring oversight responsibility.

2. Communications

A comprehensive understanding of Bureau policy, initiatives, and priorities by BLM employees is the best way to ensure the efficient and appropriate processing of Use Authorizations. Each State with a significant oil and gas program should conduct training or briefing sessions for employees and management involved in energy-related use authorizations. It is recommended that State Offices with a significant oil and gas program conduct at least one stakeholder outreach meeting each year to share oil and gas related policy changes. These meetings will create opportunities for expanded discussion and collaboration on issues related to oil and gas development.

Timeframes: Implement immediately

Budget Impacts: This policy is expected to have additional costs, especially for condition monitoring for adaptive management implementation. Costs for integrating this policy, and the external and internal workshops or meetings, will be covered, at least in part, in the third quarter with the 2003 EPCA funding from Congress.

Manual and Handbook Sections Affected: None

Coordination: Coordination occurred between the Washington Office National Energy Office (WO-380) and the EPCA Integration Use Authorization and Planning Teams. State Office and WO Group comments were solicited.

Contact: Please direct any questions to Jim Perry, Washington Office Fluid Minerals Group (WO-310), at (202) 452-5063 or jim_perry@blm.gov

Signed by:
Jim M. Hughes
Acting Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560